

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES P. ENGELS,

Plaintiff,

-v-

7:13-CV-751 (NAM/ATB)

**TOWN OF POTSDAM; JONATHAN RYAN,
Environmental Conservation Officer; FRANK
DUNNING, Town of Parishville Justice; SAMUEL
CHARELSON, Town of Potsdam Justice;
Z JONATHAN BECKER, Assistant District
Attorney; and JOSHUA HABERKORNHALM,
Assistant District Attorney,**

Defendants.

APPEARANCES:

V James P. Engels, Plaintiff *pro se*

Carter, Conboy, Case, Blackmore, Maloney & Laird, P.C.
Adam H. Cooper, Esq., of counsel
20 Corporate Woods Boulevard
Albany, New York 12211
Attorney for the Town of Potsdam and Samuel Charelson

**W Shantz & Belkin
M. Randolph Belkin, Esq., of counsel
26 Century Hill Drive
Suite 202
Latham, New York 12110
Attorney for Frank Dunning**

**Hancock Estabrook LLP
Zachary M. Mattison, Esq., of counsel
1500 AXA Tower I
100 Madison Street
Syracuse, New York 13221-4976
Attorney for Jonathan Becker and Joshua HaberkornHalm**

Hon. Norman A. Mordue, Senior U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

United States Magistrate Judge Andrew T. Baxter has issued an Order and Report-Recommendation (Dkt. No. 6) recommending *sua sponte* dismissal of this *pro se* action under 42 U.S.C. § 1983. As Magistrate Judge Baxter observes, plaintiff's complaint essentially challenges the procedures leading to the revocation of the conditional discharge of plaintiff's conviction under New York's Environmental Conservation Law for conditions at his junkyard, and the imposition of a large fine. Magistrate Judge Baxter recommends dismissal based on *Heck v. Humphrey*, on the ground that the revocation of plaintiff's conditional discharge and his resentencing have not been reversed on direct appeal. 512 U.S. 477, 486-87 (1994). Further, Magistrate Judge Baxter recommends dismissal of plaintiff's claims against the judge who presided over his case, Town of Potsdam Justice Samuel Charelsom, and the two Assistant District Attorneys who were involved in the violation hearing, Jonathan Becker and Joshua Haberkornhalm, on grounds of judicial and prosecutorial immunity.

Plaintiff objects (Dkt. No. 12). Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court reviews Magistrate Judge Baxter's report and recommendations *de novo*. In his objection (Dkt. No. 12), plaintiff alleges for the first time that the revocation of his conditional discharge and the ensuing fine were reversed by St. Lawrence County Court on August 24, 2012 on the ground that the Town Court failed to comply with N.Y.C.P.L. § 410.70. Although plaintiff does not attach a copy of the County Court's decision, this allegation is sufficient to make out a plausible claim that the revocation and resentencing have been reversed on direct appeal as required by *Heck*. Given plaintiff's *pro se* status and under the circumstances of this case, the Court deems the facts alleged in plaintiff's objection to be part of plaintiff's complaint. Thus, *sua sponte* dismissal of the complaint based on the *Heck* rule is not warranted.

The Court agrees with Magistrate Judge Baxter that plaintiff's claims against Town of Potsdam Justice Samuel Charelsion are barred by judicial immunity, and his claims against Assistant District Attorneys Jonathan Becker and Joshua Haberkornhalm are barred by prosecutorial immunity. As Magistrate Judge Baxter notes, the wrongful acts alleged against Town of Parishville Justice Frank Dunning took place after he was no longer presiding over the plaintiff's case. The Court leaves the question of whether plaintiff states a viable claim against Frank Dunning for resolution at a later stage in this case.

It is therefore

ORDERED that the Court deems the facts alleged in plaintiff's objection (Dkt. No. 12) to be part of plaintiff's complaint (Dkt. No. 1); and it is further

ORDERED that, based on the newly-alleged facts, the Court rejects so much of the Order and Report-Recommendation (Dkt. No. 6) of United States Magistrate Judge Andrew T. Baxter as recommends *sua sponte* dismissal of plaintiff's claims against the Town of Potsdam; Jonathan Ryan, Environmental Conservation Officer; and Frank Dunning, Town of Parishville Justice; and it is further

ORDERED that in all other respects the Court accepts the Order and Report-Recommendation (Dkt. No. 6), and dismisses all claims against Samuel Charelsion, Town of Potsdam Justice; Jonathan Becker, Assistant District Attorney; and Joshua Haberkornhalm, Assistant District Attorney; and it is further

ORDERED that the stay of initial proceedings is vacated; and it is further

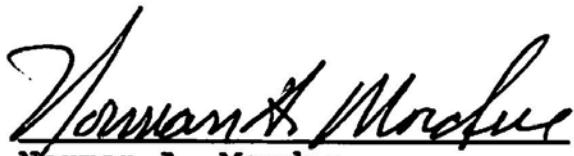
ORDERED that the case shall proceed against the Town of Potsdam; Jonathan Ryan, Environmental Conservation Officer; and Frank Dunning, Town of Parishville Justice; and it is

further

ORDERED that the Clerk of the Court is directed to serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York.

IT IS SO ORDERED.

Date: August 26, 2013
Syracuse, New York


Norman A. Mordue
Senior U.S. District Judge

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